IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1521 of 2002

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FATMABAI RAMJU CHHABA & 4 - Appellant(s)
Versus
MADHAVJI NARAN PATEL & 4 - Defendant(s)

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Appearance :
MR MEHUL S SHAH for Appellant(s) : 1 - 5.MR SURESH M SHAH for Appellant(s) : 1 - 5.
NOTICE SERVED for Defendant(s) : 1 - 5.
MR RK MISHRA for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgement and award passed by Motor Accident Claims Tribunal (Main), Kutch-Bhuj, in Motor Accident Claim Petition No.286 of 1992, in so far as the same is against the appellant.

2.0 The short facts of the case are as under:

2.1 One Ramjubhai Hasam Chhaba was doing fishing work. Since engine of the fishing boat was out of order, he took the same in a Rikshaw from Bhadreshwar to Gandhidham. When the rickshaw reached near Hadki village a jeep came from behind in excessive speed and dashed with the rickshaw. Ramjubhai suffered serious injuries in the accident and he died on the spot. The relatives of the deceased filed Motor Accident Claim Petition No.286 of 1992 before Motor Accident Claims Tribunal, Bhuj-Kutch, claiming compensation in the sum of Rs.25 lacs.

2.2 The respondent No.3 Insurance Company resisted the claim petition and stated that the claimants are required to be proved; denied the contention that the driver of the jeep was negligent; that the accident has occurred due to the negligence of the rickshaw driver; denied the income of the deceased and stated that the claimants are not entitled to get any compensation.

2.3 The Motor Accident Claims Tribunal, by judgement and order dated 18th July 2000 partly allowed the said claim application and awarded a sum of Rs.7,49,400/- along with interest at the rate of 12% per annum to the original claimants.

3.0 Feeling aggrieved by the said award, in so far as it is inadequate, the original claimants have filed the present First Appeal.

4.0 Mr. Mehul S. Shah, learned Advocate appearing for the appellants submitted that the Tribunal has committed an error in calculating the income of the deceased. Citing the said decision he submitted that the Tribunal has not properly calculated the future income as per the decision in the case of U.P. Road Transport Corporation. He further submitted that the Tribunal has erred in deducting 1/3rd amount towards personal expenses of the deceased, and as per the settled legal position the Tribunal ought to have adopted two units for major and one unit for minor.

5.0 Learned Advocate appearing for the respondent Insurance Company submitted that in fact the accident in question has occurred due to rashness and negligence on the part of the rickshaw driver and therefore the respondent no.3 is not liable to pay compensation. He submitted that the Tribunal has considered all the aspects of the case and no case is made out to cause interference in the present appeal.

6.0 As a result of hearing and perusal of the record certain aspects are not disputed. There is sufficient evidence on record to show that the accident in question has taken place due to the negligence of the driver of the jeep and not the driver of the rickshaw. Learned Advocate for the Insurance Company is not able to point out anything to the contrary. From the evidence adduced by the widow of the deceased at Exh.57, and the evidence of broker Suleman at Exh.84, it is evident that the deceased was earning between Rs.150 and 200/- per day. On this basis the Tribunal has come to the conclusion that his income is at Rs.4500/- per month. Looking to the future prospects the Tribunal has taken the same at Rs.5500/- per month. From this the Tribunal has deducted 1/3rd towards his personal expenses. Thus the monthly income was taken at Rs.3600/-, which came to Rs.43,200/- per year. Looking to the longetivity, the Tribunal has taken multiplier of 17 and awarded a total sum of Rs.7,34,400.

7.0 The contention of the appellants is that the Tribunal ought to have doubled the income and added the present income and should have divided the total amount arrived at by two and calculated the amount accordingly. This principle has been laid down by the Apex Court in the case of “U.P. State Road Transport Corporation and Others Vs.Trilok Chandra & Others”, reported in 1996(3) GLR 136.

8.0 As per the principle laid down in the aforesaid

decision of U.P. State Road Transport Corporation (supra) the Tribunal ought to have assessed the income of the deceased as stated above and on unit method. Therefore taking the income at Rs.4500, the amount would come to Rs.13500 (i.e. 4500X 2 + 4500). By dividing the said amount by two it would come to Rs.6750/- which is the future income as per the decision of the Apex Court in the case of U.P.State Road Transport Corporation (supra).

9.0 In the family there are three major persons and 3 minor persons. For one major two units are required to be taken and in case of minor one unit each is to be taken. Therefore in the present case there are 9 units. Thus the income of 6750/- is required to be divided by 9, which comes to Rs.750. Out of the income of Rs.6750/- value of two units of the monthly income of the deceased i.e. Rs.1500 is required to be deducted towards personal expenses of the deceased. Thus the dependency benefit would come to Rs.5250/-. Therefore the yearly income would come to Rs.63000/-. As far as multiplier is concerned we find that the Tribunal has rightly taken the multiplier of 17 which requires no revision. In view of this the total amount to be awarded will come to Rs.10,71,000/-. The Tribunal has already awarded a sum of Rs.7,49,400/-. Therefore, the claimants are entitled to an additional sum of Rs.3,21,600/-.

10.0 No other contentions are raised.

11.0 In the premises aforesaid the appellants-claimants shall be entitled to an additional sum of Rs.3,21,600/-. The said additional amount shall carry interest at the rate of 9%. The disbursement shall be made as per the order of the Tribunal. The award of the Tribunal is modified accordingly. The appeal is allowed to the above extent. No order as to costs.

[ANIL R. DAVE J.]

[K.S. JHAVERI, J.]

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